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In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

CLARA BELLE HENNING, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 19) is reported at 93 F. Supp. 380. The opinion of the Court of Appeals for the First Circuit (R. 30) is reported at 191 F. 2d 588.

JURISDICTION

The judgment of the Court of Appeals was entered on September 4, 1951 (R. 38). The petition for a writ of certiorari was filed on November 30, 1951, and was granted on January 28, 1952 (R. 41). The jurisdiction of this Court rests upon 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether Section 602 of the National Service Life Insurance Act, which conditions a beneficiary's rights "upon his or her being alive to receive * * * payments" and prohibits payments "to the heirs or legal representatives * * * of any beneficiary", precludes payments to the legal representative of a beneficiary who survived the insured but died before receiving any of the proceeds of the policy.

2. Whether the natural mother of the insured and a foster mother who succeeded to the relationship upon marriage to the insured's divorced father who had custody of the child, may both be regarded as parents "who last bore that relationship" within the meaning of Section 602.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in Appendix A, *infra*, pp. 27-33.

STATEMENT

This suit is based upon conflicting claims to the proceeds of a National Service Life Insurance policy in the amount of \$10,000 issued to Eugene C. Henning (R. 19). At the time of the insured's death on July 4, 1945, his father, Otto F. Henning, was designated sole beneficiary (R. 18). Otto died some five months later, apparently without having filed a claim to the proceeds (R. 18). Thereafter, Clara Belle Henning, the natural mother of the insured, and Bessie M. Henning, his foster mother,

filed claims with the Veterans Administration (R. 18). The final determination of the Veterans Administration was that Bessie, the foster mother, was entitled to the insurance benefits as the last person to bear the relationship of mother (R. 18-19). Upon the final administrative disallowance of her claim, Clara, the natural mother, brought this action, and Bessie was joined as a party defendant (R. 3, 8). During the litigation, Bessie died and her administrator was substituted (R. 17).

Eugene was born in 1912, the son of Otto and Clara, who separated at about the time of his birth (R. 18). The child and his mother lived on the home of his maternal grandmother until about 1920, when he went to the home of his paternal grandmother (R. 20). From the end of 1922 until the fall of 1926 he lived with a paternal cousin (R. 20).

In 1923 his parents were divorced and the care and custody of Eugene were awarded to the father (R. 20). In 1927 his father married Bessie, and Eugene, who was fifteen years of age at the time, went to live in his father's home (R. 21). The District Court found that, while there, Bessie "treated him with all the customary affection and attention that a mother would bestow on a natural child" (R. 21). She looked after his personal effects, did his laundry and prepared his meals, and a "reasonably close" relationship was established (R. 21). In 1930 he went to live in a board-

ing house with a friend and co-worker (R. 21). After about two years, he and his friend returned to the home of his father and Bessie, and the court found that "the pleasant relationship which had characterized the serviceman's earlier occupancy of that home continued at the time of his second occupancy" (R. 21). Eugene entered military service in November of 1942, and while in the service, he corresponded with his natural mother and sent her presents and photographs of himself (R. 21).

Eugene originally named his wife as beneficiary of his insurance policy and his father as contingent beneficiary (R. 21). In 1944 he made his father sole beneficiary (R. 21).¹ Neither his natural mother nor his foster mother were ever named as beneficiaries or contingent beneficiaries of his policy.

Although he died without receiving any installments of the insurance proceeds, the District Court held that the father, as the designated beneficiary, was entitled to six monthly installments of the insurance proceeds for the period he survived his son, and directed payment to his estate on the ground that the statutory condition that a beneficiary be "alive to receive such payments" required only that he be alive at the time of the insured's death, and not that he be alive actually to receive payment (R. 22-23). It held further

¹ His marriage was subsequently annulled (R. 18).

that "on the basis of conduct" Bessie "last bore" the status of being *in loco parentis*," but that Clara "on the basis primarily of blood" also "last bore" the relationship because "a person once tied by blood as a parent to a child always remains a parent" whether she "does or does not desert the child" (R. 22). Accordingly, it ruled that the installments due between the death of Otto and that of Bessie be paid equally to Bessie's estate and to Clara, and that all remaining installments be paid to Clara (R. 22).

The Court of Appeals affirmed the judgment of the District Court with respect to both the award of payments to the estate of deceased beneficiaries and to simultaneous recognition of both the natural mother and foster mother as the parents "who last bore that relationship," although declining to hold "that a natural parent, by that fact alone necessarily remains for life a statutory beneficiary under all circumstances" (R. 33-37).

SPECIFICATIONS OF ERRORS TO BE URGED

The Court of Appeals erred:

- (1) In holding that the proceeds of a National Service Life Insurance policy may be paid to the estate of a deceased beneficiary.
- (2) In holding that two persons may simultaneously stand in the relationship of mother to the insured, under the National Service Life Insurance Act.

(3) In holding that the failure of a named beneficiary, who died before receiving any payments, to make an election of the method of payment of the proceeds of the policy effected a waiver of election with respect to beneficiaries who remain alive to receive the proceeds.

SUMMARY OF ARGUMENT

In holding (1) that the proceeds of a National Service Life Insurance policy maturing before August 1, 1946, may be paid to the estate of a deceased beneficiary, and (2) that a natural mother, not designated as a beneficiary, is entitled to share in the insurance proceeds with a foster mother who last performed the parental role, the court below disregarded the clear statutory language and its legislative history.

Sections 602(i) and (j) (*infra*, pp. 29-30), in unequivocal language, prohibit the payments to the estate of a beneficiary which the court directed to be made. Disregard of the statutory prohibition cannot be justified on the assumption that Congress could not have intended the result reached by a literal reading of the Act's provisions. The legislative history makes clear that Congress was aware of the possibility that in some circumstances no insurance would be paid, and intended just that result. The policy underlying this purpose may be found in the fact that during hostilities the National Service Life Insurance system embodied many gratuitous aspects, the benefits of which Congress wanted to

confer on designated persons or not at all. The apparent harshness of what the court below regarded as an "escheat" of the insurance proceeds disappears when it is realized that unpaid benefits are not paid over to the treasury but remain in the National Service Life Insurance fund. The funds are available for insurance payments on National Service Life Insurance policies and for the payment of dividends where the amount in the fund exceeds the reserves needed for insurance benefits.

Equally erroneous is the court's interpretation of Section 602(h)(3)(C) (*infra*, p. 29) which limits automatic insurance benefit, to the parent or parents "who last bore that relationship." This language by itself would seem sufficient to preclude a natural mother from receiving insurance benefits, in the absence of designation as a beneficiary, where she has been succeeded in the performance of maternal functions by a stepmother. But if the statutory language is not clear beyond doubt, the origin of the language makes it so. The provision was introduced into the statute in 1942 as the result of an amendment recommended by the Administrator of Veterans' Affairs. At the time of the recommendation, it had been the consistent administrative practice under comparable statutes to displace the rights of a natural parent by those of a foster parent who last exercised parental responsibilities. The amendment was proposed to accomplish the same result with respect to National Service Life Insurance, and the legislative materials show that Congress was fully aware of this purpose.

The Government's position on both of these questions is confirmed by the fact that in the Servicemen's Indemnity Act of 1951, providing free insurance for servicemen during the period of military service, Congress reiterated (1) that installment insurance payments shall not be paid to the estates of beneficiaries and (2) that insurance benefits shall be paid, in the absence of a designation of a beneficiary, only to the parent, including a person *in loco parentis*, who last exercised the parental relationship.

ARGUMENT

I

The National Service Life Insurance Act Forbids Payment of Insurance Benefits to the Estate of a Deceased Beneficiary

The decision of the court below approves awards to the estate of Otto Henning of insurance payments, for the period between the death of the insured and the subsequent death of Otto Henning, which were not paid during his life, and to the estate of Bessie M. Henning of insurance payments, for the period between the dates of Otto Henning's death and her death, which were not paid during her life. We contend that it is only by disregarding clear and explicit statutory provisions that payment of the insurance proceeds can be made to the estates of deceased beneficiaries. The Act unequivocally makes the payment of insurance installments conditional upon the bene-

ficiaries remaining alive to receive them. Section 602 (i) (38 U.S.C. 802 (i)) specifically states that—

The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments.

If any ambiguity lurks in this language to permit its interpretation as requiring only that the beneficiary be alive at the time of the insured's death, as held by the court below, it is dissipated by the statutory provision immediately following, to the effect that—

No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority. * * *

Despite the clarity of the Congressional intention embodied in these provisions—with respect to which the court below acknowledged, “It is certainly true that the literal wording of the statute goes a long way towards sustaining the Government's contention” (R. 34)—the Act goes even further and provides in Section 602 (j) (38 U.S.C. 802 (j)) that—

No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary. * * *

Both courts below were of the view that giving effect to the plain import of the statutory language might have the effect of denying to beneficiaries benefits to which they were entitled and did not receive by virtue of sheer happenstance. Whether this result is desirable or not, it seems clear from the statutory language that Congress intended it. This is not a situation where the literal application of a statute to some unforeseen set of circumstances accomplishes a weird result which Congress cannot be deemed to have intended. See, *e.g.*, *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543. The circumstances encountered here are neither unusual nor unforeseeable. This is evidenced by the number of cases in which the problem has arisen, which represent but a small proportion of the situations in which the same question has been disposed of administratively. See *Baumet v. United States*, 177 F. 2d 806 (C.A. 2); *Washburn v. United States*, 63 F. Supp. 224 (W.D. Mo.); *Carpenter v. United States*, 72 F. Supp. 510 (W.D. Pa.); *Brackeen v. United States*, (N.D. Texas, July 26, 1951).

In fact, it seems that Congress had this precise situation in mind when it used such language as "no person shall have a vested right to any installment * * * not paid * * * during such beneficiary's lifetime" and "no installments * * * shall be paid to the heirs or legal representatives * * * of any beneficiary." Thus, however un-

wise the Congressional judgment might seem, it is plain and must be given effect.

Examination of the background and purposes of the legislation, as originally enacted, discloses that these provisions do not accomplish untoward results. On the contrary, they carry out the purposes of the statute. It will be recalled that the statute, as originally enacted and until 1946 (see *infra*, pp. 14-15), narrowly defined the permitted class of beneficiaries under National Service Life Insurance policies. Section 602(g), 38 U.S.C. 802 (g). In enacting this insurance program for servicemen, the Congress assumed large obligations to provide benefits for a limited class which it believed entitled to compensation in the event of the serviceman's death. Thus "Congress specified that the United States would bear the administrative costs of the insurance system, excess mortality and disability cost resulting from the extra hazards of war, and the cost of reimbursing the reserve fund for waiving recovery of benefit payments erroneously made where it would be inequitable to require repayment." *United States v. Zazove*, 334 U.S. 602, 616.² Furthermore, the statute provided that certain servicemen who died in the line of duty without having insurance at the time of their death would be deemed to have had insurance payable to

² See 38 U.S.C. 802 for other specified costs to be borne by the United States. To date the costs to the United States have far exceeded the payments out of the insurance funds.

designated beneficiaries. Section 602 (d)(2), 38 U.S.C. 802(d)(2).

In assuming ~~this~~ large financial burden, Congress had a wholly understandable interest in limiting the objects of its bounty, and it did so in the statute. In view of its careful enumeration of the permitted beneficiaries, there is no reason to believe that it intended either the estate, the heirs, or the creditors of beneficiaries to receive insurance proceeds if the designated statutory beneficiaries were not alive to receive them. In fact, the Congressional purpose in so defining the permitted class of beneficiaries would be thwarted if payments were made to any others.

It may be unfortunate, as the courts below pointed out, if conflicting claims result in the withholding of payment from the proper beneficiary. But the misfortune is in the failure of the beneficiary to receive the payment intended for *him*. The decision below, however, does not correct this misfortune by directing payments to the beneficiary's estate which will result in their being received by persons who are not eligible beneficiaries under the statutory prescription.

In interpreting the statute to permit payments to a beneficiary's estate, the court below sought to prevent "the making of profits for the Government escheat" (R. 33, 35) through the failure of beneficiaries. This effort, however, reflects a disregard of explicit statutory language and a mis-

understanding of the operation of the National Service Life Insurance system. Section 602 (j) [38 U.S.C. 802(j)] specifically provides—

in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made * * *

Thus, the court sought to avoid a result which Congress expressly provided should occur.

Moreover, contrary to the view of the courts below, the Government does not profit by escheat (R. 35) and the money does not remain in the Treasury of the United States (R. 23). All premiums paid on the policies are retained in the National Service Life Insurance Fund which is used for payments on matured policies. To the extent that the resources in the Fund exceed the needs for insurance payments, they are paid as dividends on policies. Thus the failure to make payments outside the class of designated beneficiaries does not enrich the Government but, instead, benefits the servicemen and ex-servicemen who are the holders of National Service Life Insurance policies.

If additional evidence is necessary to demonstrate that Congress understood exactly what it was doing when it provided for payments to designated persons and no others, this is supplied by the legislative history and subsequent legislative developments.

In enacting the National Service Life Insurance Act of 1940, the draftsmen had the benefit of the experience of the World War Veterans' Act of 1924, 43 Stat. 607, which provided for the payment to the beneficiary's personal representatives of accrued installments of insurance unpaid at the time of his death (Section 26, 38 U.S.C. 451) and to the estate of the insured of the present value of all un-matured installments (Section 303, 38 U.S.C. 514). In view of the express provisions in the 1924 Act, which Congress used as a model in drafting the benefit provisions of the 1940 Act (*United States v. Zazove*, 334 U. S. 602, 617-619), for the payment to the beneficiary's estate of installments accrued, but unpaid, during the lifetime of the beneficiary (*McCullough v. Smith*, 293 U. S. 228, *Singleton v. Cheek*, 284 U. S. 493), the omission of similar provisions from the National Service Life Insurance Act of 1940 emphasizes Congress' intention to limit insurance benefits to living beneficiaries.

The 1946 amendments to the National Service Life Insurance Act evidence Congress' clear understanding of the restrictions on payments previously imposed. After hostilities had ceased and the National Service Life Insurance system began to assume more of the aspects of an ordinary commercial insurance scheme, the prohibitions contained in Section 602(i) and (j) [38 U. S. C. 802 (i) and (j))] were deliberately curtailed, prospectively only, by the addition to each section of the provision that it "shall not be applicable to insurance maturing on or after the date of enact-

ment of the Insurance Act of 1946 [August 1, 1946]".³ Sec. 5(b), Act of August 1, 1946, 60 Stat. 781, 783. Payment of insurance proceeds to the estates of deceased beneficiaries and the insured was specifically authorized in certain circumstances. Sec. 602(u), 38 U.S.C. 802 (u) (*supra*, p. 30).⁴ Congressman Rankin explained the changes in these terms (92 Cong. Rec. 6170):

Under existing law, if there is no person within the permitted class of beneficiaries above specified living to receive payments of insurance, no payments are made.

The Servicemen's Indemnity Act of 1951 (Public Law 23, 82d Cong., 1st sess.) confirms the Con-

³ See testimony of Mr. Harold W. Breining, Assistant Administrator for Insurance, Veterans Administration, Hearings before the Subcommittee on Insurance of the Committee on World War Veterans' Legislation, House of Representatives, 79th Congress, Second Session, on H.R. 5772 and H.R. 5773, as follows (p. 1):

The fundamental reasons for liberalization are that during the war the bulk of losses all came from the National Treasury. Through this method the Government assumed the losses due to the extra hazards of military and naval services. Since the Government during the war bore the major part of the losses it was not felt that the Government would want to pay, indirectly through this channel, large sums of money to persons who might be beneficiaries only because of some speculation, or because the insured might wish to give it to them as distinguished from persons who were likely to be dependent or to whom the insured might owe some semblance of a moral obligation. These restrictions originally were placed in the law with the clear intent that they would be eliminated when the period of emergency was over.

⁴ Even under this provision, except where the beneficiary is entitled to choose a lump sum settlement, accrued but unpaid installments of insurance benefits may not be paid to estates of beneficiaries. 38 U.S.C. (Supp. IV) 802(u).

gressional policy of limiting "beneficiaries to the survivors in the immediate family of the insured" (S. Rep. 91, 82d Cong., 1st sess., p. 8) where governmental gratuity plays a major role in the insurance plan. This statute, which awarded free life insurance in the amount of \$10,000 to servicemen during the period of military service, reestablished the principle of permitting payments only to authorized beneficiaries alive to receive them, by the following provision (Section 3):

Any installments of an indemnity not paid to a beneficiary during such beneficiary's lifetime shall be paid to the named contingent beneficiary, if any; otherwise, to the beneficiary or beneficiaries within the permitted class next entitled to priority: *Provided*, That no payment shall be made to the estate of any deceased person.

Readoption of this principle in circumstances comparable to those which surrounded the enactment of the National Service Life Insurance Act convincingly evidences deliberate Congressional policy rather than the "unfortunate" and "not purposeful" use of language assumed by the court below (R. 34).⁵

⁵ At least four district courts have experienced no difficulty in giving the statutory language its natural and literal meaning to deny payment of insurance proceeds to the estates of surviving but deceased beneficiaries. *Washburn v. United States*, 63 F. Supp. 224 (W.D. Mo.); *Carpenter v. United States*, 72 F. Supp. 510 (W.D. Pa.), reversed on other grounds, 168 F. 2d 369 (C.A. 3); *Baumet v. United States*, 81 F. Supp. 1012 (S.D. N.Y.), reversed, 177 F. 2d 806 (C.A. 2); *Brackeen*

The effect of the judgment below is (1) to require the payment of insurance benefits to a beneficiary who is not alive to receive them, despite the statute's conditioning the rights of any beneficiary upon his "being alive to receive such payments", (2) to recognize a vested right in beneficiaries to unpaid installments, despite the statutory provision that "no person shall have a vested right to any installment or installments of any such insurance," and (3) to permit the payment of insurance proceeds to the legal representatives of deceased beneficiaries, despite the statutory language that "no installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary." See *infra*, pp. 29, 30. The present case would seem to present a peculiarly appropriate occasion for application of the time honored and recently reiterated rule that if the results achieved by the statutory language seem undesirable, the remedy is for Congress and not for the courts. See, *e.g.*, *Pillsbury v. United Engineering Co.*, 342 U. S. 197, 200.

v. United States, N.D. Texas (July 26, 1951). Moreover, the consistent administrative construction, presumably known to Congress, has been to deny such payments, a practice which has controlled the settlement of many claims. This administrative practice is itself entitled to great weight and should not be overturned except for the most compelling reasons.

A Natural Mother, Unless Designated as a Beneficiary by the Insured, Cannot Take as a Parent Where a Foster Parent "Last Bore That Relationship"

The court below held, with the District Court, that upon the death of Otto Henning, who was the only beneficiary designated by the insured, Clara, the natural mother, was entitled to share the proceeds of the policy equally with Bessie, the foster mother. Subsection (3)(C) of Section 602(h) [38 U.S.C. 802(h)] provides that if no widow, widower, or child survive, payment shall be made—

to the parent or parents of the insured who last bore that relationship, if living, in equal shares

* * *

The District Court held that the natural mother of the insured is a mother " 'first,' 'last', and all the time" (R. 22, 36), so that she was entitled to share in the proceeds of the policy equally with the foster mother of the insured, notwithstanding the fact that the latter was the maternal parent "who last bore that relationship" to the insured within the meaning of Section 602(h)(3)(C).^a The Court of Appeals affirmed with the qualification that (R. 37) "It may be that a natural parent who has voluntarily for some selfish reason abandoned all pa-

^a Section 601(f). (38 U.S.C. 801(f)), at the date of the insured's death, defined the terms "parent," "father," and "mother" as including " * * * persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year."

rental responsibility cannot be heard to assert his or her parenthood only for the purpose of collecting insurance benefits." We submit that this result disregards the specific statutory command that only the "parents of the insured who last bore that relationship," shall be entitled to the proceeds of the policy.

The legislative history of the amendment by which Congress added the words "who last bore that relationship" to Section 602(h)(3)(C) reveals that it specifically rejected the view that a natural parent is always a "parent" for the purposes of the Act, but rather intended benefits of insurance passed by devolution to be payable only to the one mother or father who last *exercised* the parental relationship, even to the exclusion of a natural parent. The quoted language was added in Section 9 of the Act of July 11, 1942 (56 Stat. 657) by a committee amendment in the Senate upon the recommendation of the Administrator of Veterans' Affairs. See H. Rep. 2312, 77th Cong., 2d Sess., p. 4. This recommended change was made against a consistent administrative background of distributing benefits in accordance with the interpretation of the statute urged here. See letter of the Administrator of Veterans' Affairs, Appendix B, *infra*, pp. 33-38. See also Administrator's Decision No. 510, 1 Dec. of Administrator of Veterans' Affairs, p. 767; Adm. Dec. 792, 1 Dec. of Administrator of Veterans' Affairs (Supp. 3), p. 13. In explanation thereof, on the floor of the House,

Congressman Disney of Oklahoma, the floor manager of the legislation, stated:

In the Senate there was added to the bill four amendments * * *. The first two of these amendments are only clarifications * * *.

The third amendment places the parent who last bore that relationship precedence over other parents; in other words, a person who stood in the relationship of loco parentis to the soldier for not less than a year immediately prior to his entrance into the active service would take precedence over a natural parent. [88 Cong. Rec. 5932.]

Similarly, the Senate Report accompanying the 1942 Amendment explains that only a person "who last bore and exercised the parental relationship may be paid as beneficiary". (Italics supplied, S. Rep. 1430, 77th Cong., 2d Sess., p. 2).⁷

The express language of the 1942 amendment was given effect by the Court of Appeals for the

⁷ The full discussion in the Senate Report follows:

Sections 7 to 9 are for the purpose of clarifying the existing legislation pertaining to the permitted class of beneficiaries, with particular reference to the terms "parent," "father," and "mother".

These terms as used in the original act and the amendment of December 20, 1941, are not defined. As a result it could be held that only natural parents are included notwithstanding that in a given case the soldier may have been deserted by the natural parents and have been raised and supported wholly by an adoptive parent or parents. It is intended that they may be designated by the insured and that in case of automatic benefits, failure of designation or death of beneficiary, a person within the class as defined who last bore and exercised the parental relationship may be paid as beneficiary. Sections 8 and 9 are merely perfecting changes in existing law to conform to such intent.

Second Circuit in *Baumet v. United States*, 191 F. 2d 194, now pending before this Court on petition for a writ of certiorari, No. 203 Misc., where the succession of a stepfather to the status of a father to the insured was held to exclude the natural father from the class of non-designated statutory beneficiaries, even after the death of the stepfather. Referring to the effect of "the limiting clause 'who last bore that relationship'," the court said (pp. 196-197):

The insured can have but one maternal parent and one paternal parent. Since Section 801 (f) recognizes a person *in loco parentis* as a parent, the parents of William Baumet, Jr., at the time of his enlistment were Julie Peters, his foster mother, and John Peters, his foster father. Hence John Peters was the paternal parent who last bore that relationship to the insured, and the appellant [the natural father] cannot satisfy the statutory requirement.

Consequently, the foster mother was held entitled to all of the insurance proceeds.

The Court of Appeals for the Tenth Circuit in *Leyerly v. United States*, 162 F. 2d 79, also reached the conclusion that under the amended statutory language, parents *in loco parentis* are entitled to the proceeds of a policy where they displaced the natural parents in performing the parental role because illness prevented the natural parents from continuing in the capacity. In so holding, the court

stressed the significance of actually performing the parental function, pointing out that Congress wanted to "make sure" that recognition as beneficiaries would be given to persons "who last bore and exercised the parental relationship" and "that Congress contemplated a relationship or status based upon facts, and not upon the circumstances of birth" (p. 85).

Additional support for the Government's construction is found in the Servicemen's Indemnity Act of 1951. Section 3 of that Act, which likewise defines "parent" as including a "person who stood *in loco parentis* to the insured" (Appendix, p. 32), provides that "unless designated otherwise by the insured, the term 'parent' shall include only the mother and father who last bore that relationship to the insured." As originally reported to the House, Section 3 did not contain limiting language comparable to that involved here.

In a letter to the House and Senate Committees with respect to this provision (see S. Rep. No. 91, 82nd Cong., 1st Sess., p. 12; H. Rep. No. 6, 82nd Cong., 1st Sess., p. 14), the Administrator of Veterans Affairs stated:

It should be noted that an individual may have more than two parents, as that term is defined by the bill, all of whom might share the indemnity at the same time. Thus, adoptive parents who reared a child from infancy would have to share the Government's bounty equally with the natural parents who aban-

done the child or with parents who stood in loco parentis for any period however short. Under the National Service Life Insurance Act, insurance is payable only to the parent or parents who last bore that relationship to the insured unless some other parent is designated as beneficiary by the insured.

When the bill reached the Senate Committee on Finance, Section 3 was amended to add that "the term 'parent' shall include only the mother and father who last bore that relationship to the insured." Thus, Congress has consistently declared that where a natural and an adoptive parent successively occupy that relationship, it intends insurance benefits to devolve (in the absence of a designation) only to the last person to occupy the role of parent, even to the exclusion of a natural parent.

The apparent basis for the decision below was the court's fear that in some circumstances a worthy but unfortunate natural parent would be excluded from a share in insurance benefits, to the advantage of a foster parent. There is no reason to believe that this will happen with sufficient frequency to justify ignoring the unambiguous statutory provision. It will be noted that Section 602(h)(3) prescribes the order in which close relatives of the insured shall receive insurance benefits only where the insured has failed to designate beneficiaries and the order in which he desires them to receive benefits. The

insured is free to designate a natural parent to the exclusion of a foster parent, or to divide the benefits between them. The insured is in a better position than courts or administrators to determine whether his relationship with a natural parent should be recognized in the disposition of insurance benefits. His failure to designate his natural parent as a beneficiary presumably reflects indifference, particularly when other persons have been acting *in loco parentis* towards him. It is only where insured fails to designate which "parents" are to receive insurance benefits that the Act provides that they shall go to the parents "who last bore" that relationship to him. This is entirely consistent with the general statutory policy of channeling insurance benefits to close relatives who, if not actually dependent upon the insured, are at least potential dependents. Obviously, where, as in this case, there have been successive parental relationships, the "parent or parents who last bore that relationship to the insured" or, as the Senate Committee put it, "who last bore and exercised the parental relationship," is most likely the "parent" towards whom the insured would feel an obligation to support.⁸ In

⁸ It should also be noted that if the parent "who last bore" that relationship predeceases the insured, then, the insurance benefits devolve to the brothers and sisters of the insured. If his relationship with his natural parent has been so attenuated that another person has acted *in loco parentis*, it is not unlikely that the relationship of the insured with his brothers and sisters will in fact be closer than that with the natural but superseded parent.

any event, any apparent hardship in an occasional case resulting from the statutory order of devolution is no different from that which may sometimes result from the prescribed order of devolution under general intestacy statutes.

Under the decision below, a foster parent who satisfies the statutory requirement, in order to obtain the insurance benefits which Congress intended should devolve to such parent, must also prove that the natural parent "has voluntarily for some selfish reason abandoned all parental responsibility." But as noted above, the Congress clearly intended that insurance benefits should devolve only to the parent who has last actively performed the parental function. Thus, even an involuntary relinquishment of parental responsibility, as by insanity in the *Leyerly* case, is within the statutory command that the foster parent who assumes the responsibility shall become entitled to the insurance benefits. Moreover, the court below, in drawing distinctions between voluntary and involuntary, and selfish and unselfish, relinquishment of parental responsibility by the natural parent, has introduced concepts which will be difficult for administrators and courts to apply. We urge that this result violates the clear statutory purpose of providing a simple and usually fair arrangement for the devolution of insurance benefits in cases where the insured has failed to designate beneficiaries.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.⁹

PHILIP B. PERLMAN,
Solicitor General.

HOLMES BALDRIDGE,
Assistant Attorney General.

SAMUEL D. SLADE, •

MORTON LIFTIN,
Attorneys.

MARCH, 1952.

⁹ The court below entertained some doubt as to the existence of a right of election by the beneficiary as to the method of payment of the insurance proceeds under the instant policy, apparently because of the mistaken assumption that the statutory amendment authorizing the Administrator to provide the right of election was enacted in 1946, after the death of the insured (R. 37-38). The amendment was in fact passed in 1944 (58 Stat. 762), and, pursuant to regulations of the Administrator (38 CFR (1944 Supp.) 10.3475), the option was made available with respect to every policy under which payment had not commenced prior to September 30, 1944. The option therefore existed when the present policy matured in 1945. The court's view that any right of election was available only to the first beneficiary is in accord with the administrative regulation that the right to elect a refund life income is "available only to the beneficiary first receiving payment" (38 CFR (1944 Supp.) 10.3479). Its ruling that Otto was entitled to make the election rested on its conclusion that payments should be made to his estate and that this made him the first beneficiary for that purpose. If the Court should adopt the Government's interpretation of the statute, however, no eligible beneficiary remains alive to receive payments and the proceeds remain in the insurance trust fund available for dividends and payments on policies. If the Court should rule that a beneficiary must be alive to receive payments, but that Clara is an eligible beneficiary, then Clara as the first beneficiary actually receiving payment should exercise the election and payments should be based upon her age at the death of the insured. Sec. 602(h)(1) and (2), 38 U.S.C. 802(h)(1) and (2).

APPENDIX A

The pertinent portions of the National Service Life Insurance Act of 1940, 54 Stat. 1008, as amended by the Act of July 11, 1942, 56 Stat. 657, the Act of September 30, 1944, 58 Stat. 762, and by the Act of August 1, 1946, 60 Stat. 781, 38 U.S.C. 801, *et seq.* provide as follows:

Section 601.

(f) The terms "parent", "father", and "mother" include a father, mother, father through adoption, mother through adoption, persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured.

Section 602.

(g) The insurance shall be payable only to a widow, widower, child (including a step-child or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided: *Provided*, That the provisions of this subsection as to the restricted permitted class of beneficiaries shall not apply to any national service life-insur-

ance policy maturing on or after the date of enactment of the Insurance Act of 1946 [August 1, 1946].

(h) Insurance maturing prior to the date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: * * *

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary: *Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund

life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: * * *

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order— * * *

(C) if no widow, widower, or child, to the parent or parents of the insured who last bore that relationship, if living, in equal shares; * * *

(i) If no beneficiary is designated by the insured or if the designated beneficiary does not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insur-

ance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h). The provisions of this subsection shall not be applicable to insurance maturing on or after the date of enactment of the Insurance Act of 1946.

* * * * *

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made, * * *. The provisions of this subsection shall not be applicable to insurance maturing on or after the date of enactment of the Insurance Act of 1946.

(u) With respect to insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946, in any case in which the beneficiary is entitled to a lump-sum settlement but elects some other mode of settlement and dies before receiving all the benefits due and payable under such mode of settlement, the present value of the remaining unpaid amount shall be payable to the estate of the beneficiary; and in any case in which no beneficiary is designated by the insured, or the designated beneficiary does not survive the insured, or a designated beneficiary not entitled to choose a lump-sum settlement survives the insured, and dies before receiving all the benefits due and payable, the commuted value of

the insurance remaining unpaid shall be paid in one sum to the estate of the insured: *Provided*, That in no event shall there be any payment to the estate of the insured or of the beneficiary of any sums unless it is shown that any sums paid will not escheat.

Section 602 (u) ~~was~~ Amended in 1949 (63 Stat. 74, 38 U.S.C. (Supp. IV) 802(u)) to read as follows:

(u) With respect to insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 [August 1, 1946], in any case in which the beneficiary is entitled to a lump-sum settlement but elects some other mode of settlement and dies before receiving all the benefits due and payable under such mode of settlement, the present value of the remaining unpaid amount shall be payable to the estate of the beneficiary; and in any case in which no beneficiary is designated by the insured, or the designated beneficiary does not survive the insured, or a designated beneficiary not entitled to a lump-sum settlement survives the insured, and dies before receiving all the benefits due and payable, the commuted value of the remaining unpaid insurance (whether accrued or not) shall be paid in one sum to the estate of the insured: *Provided*, That in no event shall there be any payment to the estate of the insured or of the beneficiary of any sums unless it is shown that any sums paid will not escheat.

Section 3 of the Servicemen's Indemnity Act of 1951 (Public Law 23, 82nd Cong., 1st Sess., Chap-

ter 39, effective April 25, 1951), provides as follows:

Sec. 3. Upon certification by the Secretary of the service department concerned of the death of any person deemed to have been automatically insured under this part, the Administrator of Veterans' Affairs shall cause the indemnity to be paid as provided in section 4 only to the surviving spouse, child or children (including a stepchild, adopted child, or an illegitimate child if the latter was designated as beneficiary by the insured), parent (including a stepparent, parent by adoption, or person who stood in loco parentis to the insured at any time prior to entry into the active service for a period of not less than one year), brother, or sister of the insured, including those of the half-blood and those through adoption. The insured shall have the right to designate the beneficiary or beneficiaries of the indemnity within the classes herein provided; to designate the proportion of the principal amount to be paid to each; and to change the beneficiary or beneficiaries without the consent thereof but only within the classes herein provided. If the designated beneficiary or beneficiaries do not survive the insured, or if none has been designated, the Administrator shall make payment of the indemnity to the first eligible class of beneficiaries according to the order set forth above, and in equal shares if the class is composed of more than one person. Unless designated otherwise by the insured, the term "parent" shall include only the mother and father who last bore that relationship to the insured.

Any installments of an indemnity not paid to a beneficiary during such beneficiary's lifetime shall be paid to the named contingent beneficiary, if any; otherwise, to the beneficiary or beneficiaries within the permitted class next entitled to priority: *Provided*, That no payment shall be made to the estate of any deceased person.

APPENDIX B

VETERANS ADMINISTRATION
WASHINGTON 25, D. C.

Mar. 12, 1952.

Office of Solicitor

Your File Reference:
In Reply Refer to: 2FB

Honorable Philip B. Perlman
Solicitor General of the United States
Department of Justice
Washington 25, D. C.

MY DEAR MR. PERLMAN:

This refers to your recent request, in connection with the case of *United States v. Henning* in which certiorari has been granted, for an authoritative statement of the administrative practice followed by the Veterans Administration in the application of § 602, particularly subsections (h), (i), and (j), of the National Service Life Insurance Act of 1940, as amended (38 USCA § 802(h)(i) and (j)). You have specifically requested a statement as to the practice followed with respect to subsection (h)(3)(C), as amended by § 9 of P.L. 667, 77th

Congress, approved July 11, 1942, 56 Stat. 657, which inserted the words "who last bore that relationship" after the phrase "parent or parents of the insured" and before the phrase "if living, in equal shares".

The files of the Veterans Administration reflect that the amendments to the National Service Life Insurance Act of 1940, which became P.L. 667, 77th Congress, were (with the exception of § 10) drafted in and proposed by the Veterans Administration. Committee Report 2312, House of Representatives, 77th Congress, Second Session, at page 4, reflects that §§ 7 to 10, inclusive, of the bill were added as amendments to S. 2543 by the Committee on Finance of the United States Senate, and were recommended by the Administrator of Veterans Affairs. Since the Committee's comments are fully set forth in Administrator's Decision 510, February 18, 1943, which reflects the view of the Veterans Administration as to the effect to be given to the above amendment, no further comment appears necessary with regard to the report.

The proposal by the Veterans Administration that the language "who last bore that relationship" be inserted in subsection 602(h)(3)(C) resulted from the experience which it and its predecessor agencies gained in the administration of the War Risk Insurance Act and the World War Adjusted Compensation Act, each of which, so far as here material, contained language almost identical with that appearing in the National Service Life Insurance Act except that they did not contain the quoted clause. Because of the absence in

these prior statutes of limiting language like that appearing in the quoted clause, it became necessary to resolve administratively conflicts between parents who claimed either through natural or through assumed relationship with the result that, as reflected in an opinion of the General Counsel of the Veterans Bureau dated February 3, 1927, subsequently approved in Director's Decision No. 289, dated March 9, 1927, a copy of the latter of which is attached, priority was given to the parent or parents *who last bore that relationship*. Difficulties in the administration of these laws without limiting language designed to displace or exclude parents who did not last bear the relationship are reflected by numerous opinions and decisions, of which the following are typical: 27 Comp. Dec. 165, dated August 16, 1920; 27 Comp. Dec. 281, dated September 24, 1920; and 17 Comp. Gen. 843, dated April 15, 1938. To eliminate such difficulties in the administration of the National Service Life Insurance Act the proposal was made that the words "who last bore that relationship" be added. This proposal, of course, was adopted by the Congress, although the committee reports fail to reflect the reasons as fully as herein stated.

It has been the consistent administrative practice of the Veterans Administration in National Service Life Insurance cases involving a failure on the insured's part to designate a beneficiary, or in cases where a designated beneficiary dies before receiving payment, or in cases where an attempted designation is of a person not within the permitted class of beneficiaries defined in § 602(g) of the Act, to award the unpaid installments to

the person or persons within the permitted classes defined in § 602, subsection (h) (3), in the order of priority therein specified, where no different order was designated by the insured. Subsection (i) of § 602 has been consistently construed as requiring this disposition and as requiring the conclusion that no person shall have a vested right to any installment of such insurance and that any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority as provided in subsection (h). Accordingly, the consistent administrative practice has been to the effect that, by virtue of provisions of subsections (i) and (j) of § 602, installments which accrue but are not paid to a beneficiary during his lifetime cannot be paid to the estate or heirs of such beneficiary.

Subsection (j) has been consistently construed by the Veterans Administration as prohibiting any payment at all "in the event that no person within the permitted class survives to receive the insurance", except in the case of converted insurance, as to which special provision was made by the amendment to the original Act effected by § 1 of P.L. 452, 78th Congress, September 30, 1944, 58 Stat. 762-4.

The foregoing statement refers to cases wherein insurance matured prior to August 1, 1946. It is to be observed, of course, that the statutory language establishing a restricted class of beneficiaries was, by P.L. 589, 79th Congress, August 1, 1946, made inapplicable to insurance maturing thereafter, and that other provisions, particularly § 602(u), 38 USC § 802(u), were made in respect to the distribution of such insurance.

It is believed that the foregoing is the information which you desire.

Very truly yours,

EDWARD E. ODOM,
Solicitor.

March 9, 1927.

DIRECTOR'S DECISION, UNITED STATES VETERANS'
BUREAU, No. 289

SUBJECT: Preference of persons coming within the definition of mother and father in the payment of World War Adjusted Compensation benefits.

QUESTION PRESENTED: Application for benefits has been made by the adopted mother and the natural mother of the deceased and the question arises as to which of the claimants is entitled to payment.

FACTS: Applications for Adjusted Compensation benefits have been filed by one person as the mother by adoption of the deceased and by a second person as the natural mother. The records indicate that death compensation benefits were awarded to the mother by adoption and payment continued under such award until July 31, 1925, at which time an investigation was made and it was determined that the mother by adoption was not in fact dependent.

COMMENT: Since the language of the World War Adjusted Compensation Act is substantially the same as that used in the War Risk Insurance Act, which has been the subject of consideration by the Comptroller General and by this Bureau, it follows that the procedure heretofore adopted in connection with the payment of automatic insurance

should be followed in connection with the payment of adjusted service credits when that benefit is provided for dependent parents. Payments to parents are subject to the provisions of Section 602 (c) of the World War Adjusted Compensation Act, as amended July 3, 1926.

HELD: Where both the natural and adopted mothers of a deceased veteran apply for the benefits of the dependency allowance under the Adjusted Compensation Act, payment should be made to the woman who last bore the relationship of "mother" to the person in the military service; as de facto mother she takes precedence over other persons who may be included within the definition of the term "mother". To illustrate, if an adoptive mother or a stepmother or a foster mother last bore relationship of "mother" to the person in the military service, such person would take preference to payment under the Adjusted Compensation Act to a natural mother, if otherwise entitled. (Opinion of the General Counsel, February 3, 1927, C-339 991, A-33,210).

The foregoing decision is hereby promulgated for observance by all officials and employees of the United States Veterans' Bureau.

(S.) FRANK T. HINES,
Director.